

COMMISSION OF THE EUROPEAN COMMUNITIES

COM (79) 371 final

Brussels, 12 July 1979

PROPOSAL FOR A COUNCIL DIRECTIVE ON THE HARMONIZATION OF PROCEDURES FOR THE EXPORTATION OF GOODS

(Submitted by the Commission to the Council)

COM (79) 371 final

Explanatory memorandum

To apply the principles of the Treaty of Rome relating to freedom of movement for persons, goods and services and guarantee uniform application of the provisions on exports adopted within the framework of the Common Agricultural Policy, it has become necessary to establish customs procedures for the exportation of goods aimed at ending any discrimination between firms in the Community.

As they were framed to meet exclusively national requirements, existing provisions may differ significantly from one Member State to another and thus give rise to discrepancies in treatment. Not only does the number of formalities required by the customs authorities for the exportation of goods vary but there are differences in the very substance of the legal commitments binding the users of these procedures. These divergences between national export procedures became very obvious when the provisions of the Common Agricultural Policy were introduced, especially in respect of export refunds or the application of export levies or other amounts, with the result that a number of special Community provisions had to be adopted to ensure that application of the system of export refunds or levies on exports within the Community was as uniform as possible.

However, as these provisions were inevitably fragmentary, they were not enough by themselves to secure genuine equality of treatment among Community exporters.

Accordingly, Article 2 of Commission Regulation (EEC) No 192/75 of 17 January 1975 laying down detailed rules for the application of export refunds in respect of agricultural products (1) provides that "for the purposes of determining the rate of the refund the date of exportation shall be the day on which the customs authority accepts the document by which the

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(1) OJ No L 25 of 31.1.1975, p. 1

declarant states his intention to export the products in question". This Regulation does not, however, specify the conditions under which this statement of intention (i.e. the customs declaration) may be accepted nor the conditions under which its contents may be modified or even cancelled after its acceptance.

This simple example underlines the urgent need for a complete set of detailed customs rules specifying the conditions to apply to exportation of goods to non-Community countries.

However, Community rules on procedures for the exportation of goods are also needed for other reasons than just the implementation of the provisions of the Common Agricultural Policy. Given that customs procedures are a sine qua non for any common policy on trade with non-Community countries, it is clear that the Community must be able to avail itself of detailed common rules ensuring uniform implementation of these common policies throughout the Community.

The purpose of this proposal for a directive is just that. Its provisions take account both of the experience of Member States in this particular field and of the changing form of customs procedures, due mainly to data processing techniques.

Since the Community Member States at present rely to a great extent on exports to non-Community countries for continued economic activity, careful attention was given when drafting the provisions of this proposal to the need not to impede such exports or increase costs by making the procedures disproportionately strict.

In short, though everything possible must be done to place customs authorities in a position to ensure that procedures operate correctly and in particular

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to avoid fraudulent practices harmful to the Community budget(1), every effort must be made to further exports of Community products to non-Community countries, for instance by simplifying procedures.

It is for the customs authorities of each Member State acting on their own responsibility to decide to allow use of Simplified procedures, taking into account in particular, the nature of the goods to be exported, the frequency and the financial implications of exportation, the commercial organisation of the exporting firm and the administrative means which might be used to keep an effective check on its activities.

These procedural rules must, of course, allow all Community exporters, wherever possible, to operate in whichever Member State they choose in accordance with the customs union provisions and the fundamental principles of the Treaty of Rome regarding freedom of movement for goods, persons and services.

This proposal sets out to achieve all these aims. Although the provisions in themselves are fairly precise, a number of implementing measures will be necessary to achieve uniform interpretation in all Member States. Wherever necessary, the Customs General Procedures Committee referred to by the Commission in its proposal for a Council directive on the harmonization of procedures for the release of goods for free circulation (2) will therefore be consulted.

Since this proposal for a directive is based on Article 100 of the EEC Treaty, the European Parliament and the Economic and Social Committee must give their opinions.

(1) Thus, where the exportation of goods has implications for the Community budget (export duties, refund, or other payments on exportation) this proposal for a directive requires the declarant in all cases to provide the customs service with details precise enough to enable the customs to pursue the matter in accordance with the law where an examination of the goods shows that they do not correspond to those which were the subject of the export procedure.

(2) OJ No C 14 of 15.2.1974, p. 45

Proposal
for a Council directive on the harmonization
of procedures for the exportation of goods

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community and in particular Article 100 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas the Community is founded on a customs union;

Whereas, without prejudice to the transitional measures laid down in Title I, Chapter 1 of Part Four of the Act concerning the Conditions of Accession and the Adjustments to the Treaties (1), the establishment of the customs union is mainly governed by the provisions of Title I, Chapter 1 of Part Two of the Treaty; whereas this Chapter contains a series of detailed provisions relating to the elimination of customs duties between Member States, the setting-up and progressive introduction of the common customs tariff and the autonomous alteration or suspension of duties in that tariff;

Whereas Article 27 provides that, before the end of the first stage, Member States shall, in so far as may be necessary, take steps to approximate their provisions laid down by law, regulation or administrative action in respect of customs matters but does not give the Community institutions competence to adopt binding provisions in this matter; whereas a detailed examination carried out in conjunction with the Member States has shown the need for binding Community acts in certain fields as a prerequisite for the introduction of customs legislation securing uniform implementation of the various Community provisions governing trade between the Community and non-member countries;

(1) OJ No L 73 of 27.3.1972, p. 14

Whereas the procedural rules laid down by laws, regulation or administrative action in the Member States in respect of the exportation of goods are framed in the light of exclusively national interests: whereas they therefore take no account of the requirements of the customs union on which the Community is founded;

Whereas these provisions moreover vary significantly, thus causing discrepancies in the application of export duties and of any other Community provisions to which the exportation of goods to non-Community countries may give rise; whereas the resulting discrepancies in the treatment of Community exporters, since rules vary according to the particular Member State in which the customs export formalities are completed, may lead to deflections of trade and artificial transfers of business;

Whereas these provisions directly affect the establishment and proper operation of the common market;

Whereas the attainment of the objectives of the customs union has reached the stage where it is necessary to lay down, at the very least in the form of a directive, common procedural rules for the exportation of Community goods to non-Community countries;

Whereas these common rules must aim at securing proper application both of export duties and of any other Community provisions to which the exportation of Community goods to non-Community countries may give rise; whereas it is, however, important to avoid any unnecessary formalities; whereas the rules must be sufficiently flexible to enable them to be adjusted to differing circumstances and to take account of changes in administrative methods, in particular as regards data processing;

Whereas it is essential to secure uniform application of these common rules and to this end to make provision for a Community procedure for the adoption of the necessary implementing rules within an appropriate period,

HAS ADOPTED THIS DIRECTIVE :

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Article 1

1. Without prejudice to the application of any specific provisions which have been or may be adopted under the common agricultural policy, this Directive determines the rules to be contained in the provisions laid down by law, regulation or administrative action in Member States in respect of the exportation from the territory of the Community of goods fulfilling the conditions laid down in Article 9 (2) of the Treaty.
2. For the purposes of this Directive :
 - (a) territory of the Community means :
 - in the case of goods subject to export duties or eligible to benefit from export refunds or other amounts, the geographical territory of the Community as defined for purposes of the common agricultural policy;
 - in the case of other goods, the customs territory of the Community;
 - (b) export duties means the agricultural levies and other charges provided for under the common agricultural policy or the specific arrangements applicable, pursuant to Article 235 of the Treaty, to certain goods resulting from the processing of agricultural products;
 - (c) customs office means any office competent to accept the export declaration referred to in Article 2.

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TITLE I

GENERAL PROCEDURE

Article 2

The exportation from the territory of the Community of the goods referred to in Article 1 (1) shall be conditional upon the presentation at a customs office, in accordance with the conditions defined below, of an export declaration (hereinafter referred to as the "declaration").

The natural or legal person who makes the declaration is hereinafter referred to as "the declarant".

Article 3

1. The declaration shall be in writing on a form EX accompanied where appropriate by one or more forms EXC, complying with the models set out in Council Regulation (EEC) No 2102/77 introducing a Community export declaration form (1). It shall be signed by the declarant and shall contain the information necessary for the identification of the goods and for the application of export duties and of any other measures to which the exportation of the goods in question may give rise.

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(1) OJ No L 246, 27.9.1977, p. 1

2. The declaration shall be accompanied by all the documents which it is necessary to produce for purposes of the correct application of export duties and of any other measures to which the exportation of the goods in question may be subject.

Article 4

1. The declaration may be presented at any customs office which is competent, in accordance with national provisions, to complete the export formalities for the goods to which the declaration relates, once they have been produced at this office.

However the customs authority may allow the declaration to be presented before the declarant is in a position to produce the goods to it. In this case, it may set a time limit for the goods to be produced, to be determined according to the circumstances. If the goods have not been produced within this time limit, the declaration shall be deemed not to have been presented.

2. For purposes of paragraph 1, goods shall be considered to have been produced at a customs office when their arrival at the customs office, or at another place designated by the competent authorities, has been notified to the latter in the manner required to enable them to arrange for control or examination.
3. The declaration shall be presented at the customs office during the days and hours when this office is open.

However, the customs authority may at the declarant's request and expense authorize the declaration to be presented outside these opening days and hours.

4. A declaration presented to the officials of the customs office in question at some other place designated for this purpose by agreement between the competent authorities and the person concerned shall be considered equivalent to a declaration at a customs office.

Article 5

1. Only declarations fulfilling the conditions laid down in Article 3 may be accepted by the customs authority. Such declarations shall be accepted by the customs authority forthwith in accordance with the procedures laid down in each Member State.

However, where, in accordance with Article 4 (1) second subparagraph, a declaration has been presented before the goods to which it relates have arrived at the customs office or at another place designated by the customs authority, such a declaration may only be accepted when the goods in question have been produced to the competent authorities, within the meaning of Article 4 (2).

2. Member States shall take appropriate measures to ensure that the date of acceptance of the declaration constitutes the operative date for the application of Article 10.

Article 6

The declarant shall be authorized, at his request, to amend declarations accepted by the customs authority in the circumstances referred to in Article 5, as regards one or more items of information referred to in Article 3 (1), subject to the following conditions :

- (a) the amendment must be requested before the customs authority has authorised exportation of the goods;
- (b) the amendment may no longer be granted where the request is made after the customs authority has informed the declarant of its intention to examine the goods or of its own finding that the information in question was inaccurate;
- (c) the amendment must not have the effect of making the declaration refer to goods other than those to which it originally referred.

The customs authority may allow or require the amendments referred to in the previous paragraph to be effected by means of a new declaration replacing the original declaration. In this case, the date for the determination of the export duties relating to the goods in question and the date of application of any other measures to which their exportation may give rise shall be that of the acceptance of the original declaration.

Article 7

1. As long as the goods have not left the territory of the Community, the declarant may request that the declaration relating to those goods be cancelled.

However, when the customs authority has informed the declarant of its intention to examine the goods in respect of which the declaration was made, a request for cancellation may not be made until this examination has taken place.

2. The request for cancellation of the declaration may concern all or only part of the goods to which the declaration relates.
3. The request for cancellation shall not be met unless the declarant :
 - (a) provides the competent authorities with proof that the goods have not left the territory of the Community;
 - (b) produces to the said competent authorities all copies of the export declaration together with any other documents delivered to him on acceptance of the declaration.
 - (c) where appropriate, provides the competent authorities with proof that the refunds and other amounts granted on exportation of the goods in question have been repaid or that the necessary measures have been taken by the services concerned so that they may not be paid.

4. Where the goods declared for exportation have not left the customs office or other designated place within the time limit laid down by the competent authorities, the declaration shall be deemed to be cancelled.

The declarant is required :

- to re-produce to the said competent authorities all copies of the export declaration together with any other documents delivered to him on acceptance of the declaration.
 - where appropriate, to provide the competent authorities with proof that the refunds and other amounts granted on exportation of the goods in question have been repaid or that the necessary measures have been taken by the services concerned so that they may not be paid.
5. Cancellation of the declaration shall involve, as appropriate, the cancellation of attributions on the export licence or licences presented in support of the declaration.
6. Cancellation of the declaration shall in no way preclude the application of sanctions for an offence committed by the declarant.

Article 8

1. Without prejudice to the other means of control at its disposal, the customs authority may examine all or part of the declared goods.
2. The goods shall be examined in the places and during the hours designated for that purpose.

However, the customs authority may permit, at the declarant's request, the examination of goods at places and at times other than those specified above. Any costs which may result shall be borne by the declarant.

3. Transport of the goods to the places where they are to be examined, and their unpacking, repacking and all other operations required for examination shall be undertaken by the declarant or on his authority. He shall bear all costs incurred.
4. The declarant shall be entitled to be present or to be represented at the examination of the goods. The customs authority may, if it considers it appropriate, require the declarant to be present or to be represented at the examination of the goods for the purpose of providing the necessary assistance.
5. The customs authority may, when the goods are being examined, take samples for analysis or detailed examination.

The costs incurred in connection with this analysis or detailed examination shall be borne by the administrative authority.

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6. The provisions of paragraph 5 shall not preclude application of the second subparagraph of Article 8 (3) of Council Regulation (EEC) No 2682/72 of 12 December 1972 laying down general rules for granting export refunds on certain agricultural products exported in the form of goods not covered by Annex II to the Treaty and the criteria for fixing the amount of such refunds (1). In such cases, the cost of the analysis carried out by the competent authorities shall be borne by the declarant.

Article 9

1. The results of the checking of the declaration and the accompanying documents, and of any examination of the goods, shall serve as a basis for the calculation of export duties and export refunds and other amounts and for the application of any other measures to which the exportation of the goods may give rise. Where there is no checking of the declaration and the accompanying documents or examination of the goods, such calculation or application shall be effected on the basis of the information in the declaration.
2. The provisions of paragraph 1 shall not preclude any subsequent verification by the competent authorities of the Member States nor any consequences of the application of existing provisions, particularly as regards alteration of the amount of export duties applicable to such goods or of the export refunds or other amounts granted.

Article 10

Without prejudice to the special provisions applicable under general or specific Community legislation, export duties to which the goods may be subject shall be levied in accordance with the rates and amounts in force at the date of acceptance of the declaration. The same date shall be the operative date for determining other elements necessary for the calculation of these duties and for the application of any other Community measures to which the exportation of the goods in question may give rise.

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(1) OJ No L 289 of 27 December 1972, p. 13

Article 11

Without prejudice to any alterations as referred to in Article 9 (2), the amount of the export duties determined by the competent authorities shall be entered in the accounts by these authorities in the appropriate administrative forms and communicated to the declarant.

Article 12

Without prejudice to the application of any prohibitions or restrictions as regards the goods declared for export, the customs authority may not permit the exportation of the goods until any export duties levied upon them have been paid or guaranteed or arrangements have been made for their deferred payment under the conditions laid down in the Council Directive 78/453/EEC of 22 May 1978 on the harmonization of provisions laid down by law, regulation or administrative action concerning deferred payment of import duties or export duties (1).

Article 13

1. When determining the form in which it is to grant authorization to export the goods the customs authority shall take into account their location and the particular arrangements under which it exercises surveillance over them.
2. Goods which have received an export authorization shall remain under the control of the customs authority until they leave the territory of the Community.

TITLE II

SPECIAL PROCEDURES

Article 14

1. As far as is administratively possible, Member States shall authorize the use of the special procedures defined in Articles 15 to 20.

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(1) OJ No L 146 of 2.6.1978, p. 19

2. Save as otherwise provided in Articles 15 to 20, the provisions of Title I are applicable to the special procedures laid down in those Articles.

A. Exemption from written declaration

Article 15

1. Without prejudice to the application of the special provisions laid down with regard to consignments by letter and parcel post, Member States may provide that goods exported for non-commercial purposes and goods of low value, such as those contained in travellers' personal luggage, shall not be the subject of a written declaration.

Exemption from a written declaration may also be given in respect of :

- agricultural, stock-farming, horticultural and forestry products obtained within the territory of the Community from land in border areas exploited by owners or tenant farmers whose business headquarters are in a non-Member State in the immediate vicinity of the frontier with the Community,
 - seeds to be used for the exploitation of land in a non-Member State in the immediate vicinity of the territory of the Community by owners or tenant farmers whose business headquarters are located in that territory in the immediate vicinity of the non-Member State.
2. Paragraph 1 shall not apply to goods in respect of which an export licence is required or for which export refunds or other amounts are requested.

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B. Preparation of general, periodic or
recapitulative declarations

Article 16

1. Without prejudice to the application, where relevant, of Article 18, the competent authorities may authorize the declarant to furnish, or insert at a later date, certain items of the declaration in the form of supplementary declarations which may be of a general, periodic or recapitulative character.
2. Statements made in supplementary declarations together with statements made in declarations to which they refer, shall be deemed to constitute a single indivisible instrument taking effect from the date when the corresponding initial declaration was accepted.
3. The competent authorities may make the granting of the facilities provided for in this Article conditional upon the lodging of a security, the nature and amount of which they shall determine.

Article 17

When the procedure provided for in Article 16 is applied, the initial declarations relating to each consignment of goods must in any event contain the information necessary for identification of the goods.

In the case of goods whose exportation has implications for the Community budget as regards either receipts or expenditure, details of the precise tariff heading into which the goods fall and their net quantity must also appear in the initial declarations.

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C. Replacement by codified data of all or part of the information contained in the declaration

Article 18

1. The competent authorities may authorize the declarant to replace all or part of the information contained in the written declaration referred to in Article 3 (1) by communicating to the customs office designated for this purpose codified data, or data made out in any other form determined by the competent authorities that corresponds to the information required for written export declarations, with a view to computer processing.
2. The conditions under which such data are to be communicated shall be determined by the competent authorities.
3. The conditions to be satisfied by the declarant in order to obtain authorization to follow the simplified procedure defined in this Article shall be laid down by the competent authorities. The authorization may be restricted to certain goods specified by them and it may be revoked at any time.
4. Application of the provisions of this Article shall in no way preclude the exercise by the customs authority of any controls which it considers necessary to ensure that the operations are correctly carried out.

D. Granting of authorization for exportation before presentation of the declaration

Article 19

1. Where justified by the circumstances, the competent authorities may authorize the exportation of the goods as soon as they have been produced at the customs office designated for that purpose and without presentation of the declaration referred to in Article 3.
2. Authorization to export the goods shall be conditional on the presentation at the competent customs office of a commercial document containing the information necessary for identification of the goods, accompanied by an application signed by the person concerned for the exportation of the said goods.

In the case of goods whose exportation has implications for the Community budget, as regards either receipts or expenditure, details of the precise tariff heading into which the goods fall and their net quantity must be indicated on that commercial document.

Where the application of Community measures to which the exportation of the goods in question gives rise is subject to the presentation of any other document, that document must accompany the commercial document.

Acceptance by the customs office of that commercial document shall have in every respect the same legal effect as acceptance of the declaration referred to in Article 3.

3. When circumstances so permit, the competent authorities may agree to the application referred to in paragraph 2 being replaced by a general application covering exports to be carried out during a specific period. Reference shall be made to this general application in the commercial document to be presented for each export in accordance with the first subparagraph of paragraph 2.
4. The customs authority may, if it considers it necessary, make exportation of the goods conditional on their being examined on the basis of the information contained in the commercial document referred to in paragraph 2.
5. The declaration relating to goods covered by the simplified procedure referred to in paragraph 1 must be presented at the competent customs office within the period laid down by the competent authorities. Such period may not exceed 1 month from the date of acceptance of the commercial document referred to in paragraph 2.

For purposes of Article 10, this declaration shall take effect on the date on which the customs authority accepts the commercial document referred to in paragraph 2.

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6. Without prejudice to the second subparagraph of paragraph 5 and to the application, where relevant, of Article 18, the customs authority may allow general, periodic or recapitulative declarations in respect of goods.
7. Authorization to use the simplified procedure laid down in this Article shall be granted only to those persons able to provide all guarantees deemed necessary by the competent authorities. It may be granted on an occasional or a permanent basis. In the latter case, it may be restricted to certain goods. It may be revoked at any time.
8. The application of the provisions of this Article shall in no way preclude the exercise by the customs authority of any controls which it considers necessary in order to ensure that the operations are correctly carried out.
9. The competent authorities may make the granting of the simplified procedure provided for in this Article subject to the lodging of a security, the nature and amount of which they shall determine.

Article 20

1. The competent authorities may authorize natural or legal persons who frequently export goods to send these goods directly from their premises to the customs office responsible for verifying that they have left the territory of the Community without it first being necessary for them to present to a competent customs office the declaration referred to in Article 3.
2. Before the goods leave these premises, the holder of the authorization referred to in paragraph 1 shall :
 - (a) give the competent authorities adequate notice of dispatch, in the manner and form laid down by the latter, for the purpose of obtaining authorization to export the goods in question;

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- (b) enter the said goods in the records. Entry shall be carried out in the manner and form laid down by the customs authorities, indicating the date on which entry was made and the information necessary for identification of the goods;

Where the exportation of goods has implications for the Community budget, as regards either receipts or expenditure, details of the precise tariff heading into which the goods fall, and their net quantity must also appear in the records of the holder of the authorization.

- (c) make available to the competent authorities any documents, in particular export licences or advance-fixing certificates, that may have to be presented for the application of Community measures to which the exportation of particular goods may give rise.

Compliance with the formalities referred to in subparagraphs (a) and (c) shall have in all respects the same legal effect as acceptance of the declaration referred to in Article 3.

- 3. Insofar as the checking of transactions is not affected thereby, the competent authorities may in certain special circumstances justified by the nature of the goods in question and by the accelerated rate of export, exempt the authorized person from the obligation to notify the competent customs office of each departure of goods, on condition that he provides that office with all the information that it deems necessary to permit it to exercise, where appropriate, its right to examine the said goods. Entry of the goods in the records shall in that case be equivalent to authorization of their exportation.

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The categories of goods eligible for the treatment provided for in the preceding subparagraph shall be defined under the procedure referred to in Article 21 (2).

4. Where the customs service decides to examine the goods, the examination shall be effected on the basis of the information in the records of the person concerned.

5. The declaration relating to the goods which are the subject of the authorization referred to in paragraph 1 must be presented at the customs office designated for that purpose within the period fixed by the competent authorities. Such period may not exceed one month from the date of entry of the goods in the records of the person concerned.

For purposes of Article 10 this declaration shall take effect on the date of the entry of the said goods in the records of the person concerned.

6. The authorization to use the simplified procedure provided for in this Article shall be granted only to those persons able to provide all guarantees deemed necessary by the competent authorities. It may be restricted to certain goods and be revoked at any time.

7. The provisions of paragraphs 6, 8 and 9 of Article 19 shall also apply where there is recourse to the provisions of this Article.

8. The entry of the goods in the accounting records of the person concerned in accordance with paragraph 2 (b) may be replaced by any such other similar formality offering analogous guarantees as may be specified under the procedure referred to in Article 21(2).

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TITLE III

FINAL PROVISIONS

Article 21

1. The Customs General Procedures Committee provided for in Article of Council Directive of on the harmonization of procedures for the release of goods for free circulation (1) may examine all matters relating to the application of this Directive as are out to it by its chairman, whether on his own initiative or at the request of the representative of a Member State.
2. The provisions necessary for the application of Article 3, Articles 5 to 7, Article 8 (1)(4) and (5), Article 9 (1) and Articles 18 to 20 of this Directive shall be adopted in accordance with the procedure laid down in Article 27 (2) and (3) of Directive

Article 22

1. The Member States shall bring into force the measures necessary to comply with this Directive not later than 1 January 1981.
2. Each Member State shall inform the Commission of the provisions which it makes for the application of this Directive.

The Commission shall communicate this information to the other Member States.

Article 23

This Directive is addressed to the Member States.

Done at Brussels,

For the Council

(1) OJ No